REMARKS

This Preliminary Amendment, in connection with the following remarks, are submitted as responsive to the Final Office Action, including the Advisory Action of December 6, 2006. Claims 1 and 16 are the independent claims. Claims 1-20 were pending, and Applicants have amended claims 1, 5, 9, 11, 12, 16 and 20, and have canceled claims 4 and 8. Favorable reconsideration is requested.

Claims 1, and 4-15 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 54,704,045 to King ("King") in view of U.S. Patent No. 6,330,547 to Martin ("Martin"). Additionally, claims 2-3 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over King in view of Martin, and further in view of U.S. Patent No. 6,138,102 to Hinckley ("Hinckley"). Finally, claim 16 stands rejected under 35 U.S.C. § 103(a) as unpatentable over U.S. Patent No. 6,119,106 to Mersky ("Mersky") in view of Martin, and claims 17-19 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Mersky in view of Martin and further in view of Hinckley. Applicants respectfully urge that no combination of any of the cited art teaches each element of the amended independent claims, and thus all pending claims, as amended, are now in condition for allowance.

King is directed towards a risk transfer system, preferably to be offered by an insurance company or insurance entity. King at 5:45-55. In King, transfer of risk to underwriters is used to lay-off a certain amount of risk inherent in a venture in return for giving the risk acceptor a share of the potential profits and investment returns that flow form the venture. *Id.* at 6:15-24. King describes the intermediary or "entity" (preferably

an insurance company, as noted above) using a separate class of assets, liabilities and capital, known as "Reserved Assets" to support its system. *Id.* at 6:1-4.

King does not teach or even describe paying creditors of a debtor in an insolvency proceeding. Thus, it does not address methods of paying a statutorily sanctioned class of creditors – *e.g.*, those whose respective creditor's claims have been allowed – within such an insolvency proceeding, or in connection with a bankrupt estate, as is recited in claim 1. The Final Office Action cites to King at 24:11-17 as somehow teaching "paying a creditor in advance of a final distribution in an insolvency proceeding." This is, respectfully, a gross misreading of King. Claim 2 of King (at 23:58-24:17) recites a method of facilitating the risk transfer and acceptance of specially defined risks through an entity. In particular, the cited language of claim 2 -- "employing said means to effect existing external regulation and fiduciary oversight to . . . protect the structure, entity and parties transferring risk and capital providers from risks of insolvency, judicial intervention by third parties, and other external entity risks" -- describes using a certain means to obviate risks of any insolvency of the insurance company (the entity) that is holding the reserved assets, to risk transferors that are using the services of the insurance company as intermediary. This has nothing at all to do with paying the creditors of an already insolvent debtor in an insolvency proceeding. Rather, claim 2 of King seeks to insulate the transferors **from** an insolvency – not deal with them as creditors of the insurance company in an **existing** insolvency. Thus, claim 2 claims one of the "key provisions of modifications [of the laws to which insurance companies are subject by altering the legislation of the jurisdiction under which the entity is governed]" described at 7:62-66:

x) reallocate assets from one reserve to another or to general assets, subject to agreements entered into pursuant to each reserve, said agreements being recognized by government as being inviolate in the event of bankruptcy, liquidation, or claims of general creditors and other parties;

King here is advocating that an entity according to its system needs to lobby for a statutory change that protects the "reserved assets" even if the entity goes bankrupt. Legislative change – as here in King -- is not an element of the present invention. Paying creditors once an actual insolvency proceeding has begun, is.

Thus, the risk transference scheme set forth in King is not in any way concerned with settling of claims of statutorily sanctioned unsecured creditors in an insolvency proceeding by a responsible party for a fixed sum in exchange for speeding up the creditors' access to their monies and removing uncertainties regarding potential additional unsecured creditor's claims. The "entity" in King simply does not function as does the "responsible party" in the claimed invention, and thus cannot teach the functions of such "responsible party" of the claimed invention. The King entity is a risk transference intermediary who transfers risk form one party to another for a fee. The responsible party of the claimed invention is a claim settling agent for unsecured creditors all facing identical risk. King deals with creditors who – as a result of using the King system – are secured. Their risk has been laid off to an **underwriter**. The *underwriter* is the unsecured party, and he is not offered any payment at all in King. Thus, it is respectfully submitted that King does not contemplate, as set forth in the claimed invention, a method or system where certain unsecured creditors in an insolvency proceeding may elect between (i) receiving a timely payment of a predetermined amount made pursuant to an offer by a responsible party, or (ii) rejecting

said offer of payment and waiting to receive some payment at the time of the final distribution in an amount yet to be determined.

Thus, King does not teach the first two elements of independent claim 1 or the corresponding elements of independent claim 16.

Martin does not cure the defects of King as a reference against the claimed invention. Martin is directed to enhancing the creditworthiness of intellectual property by providing a lender a quantified realization price on repossessed collateral. This involves a lender contracting in advance with a third party to purchase the intellectual property at a defined price, should there be a default by the borrower. Effectively, the third party in Martin writes a put option to the lender, and if the lender forecloses the intellectual property and cannot find a buyer, the lender can always put the intellectual property to the third party and at least get the "asset liquidation value", adjusted for depreciation, from the third party. Martin is thus concerned with obtaining at the onset of the loan, a minimum "foreclosure sale price" from a third party for the intellectual property collateral, seeking a method to assuage the fears of lenders by procuring an ultimate foreclosure sale purchaser of the intellectual property collateral at the outset of the loan. Martin at Abstract.

The "third party" of Martin also does not act as does the responsible party of the claimed invention. In Martin, a third party surety is simply agreeing to make a certain payment as a purchase price for collateral in the event the debtor defaults on the proposed loan. This does not teach the claimed "wherein if any of said unsecured creditors accepts the offer, paying said predetermined payment amount to said unsecured creditor within a

predetermined time period following said acceptance." Martin has no statutorily sanctioned class of unsecured creditors to pay and no insolvency proceeding in which to pay them. Nor does Martin teach the claimed "wherein if any of the said unsecured creditors do not accept the offer, paying those creditors an amount later approved by a court at the end of a final distribution proceeding," inasmuch as there is no opportunity in Martin for "creditors" to refuse the offer and wait for the final distribution in an insolvency proceeding to settle their claim.

In Martin, once the lender forecloses the intellectual property collateral, he takes what he can get for it. He either sells it or takes the third party's "asset liquidation value." He cannot hope to do better than other creditors in his class by waiting for a better offer – the offer was fixed *ab initio*, there is no insolvency proceeding in which to operate, and no final distribution looming at the end of the proceeding if he waits. Moreover, the lender in Marin is secured. He has the collateral. The claimed invention is directed towards unsecured creditors being offered an early full distribution by a responsible party.

Mersky is directed to a system to facilitate customer payments to creditors from a remote site. Mersky thus deals with consumers paying their monthly bills and is submitted as wholly unrelated to Martin as well as to the general problem solved by the claimed invention. Finally, Hinckley is not asserted by the Examiner against either of the independent claims. Thus claims 1 and 16, as amended, are urged as patentable over each of King in view of Martin as well as over Mersky in view of Martin.

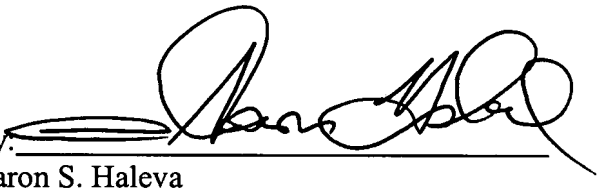
The remaining dependent claims are urged as patentable for similar reasons.

If there are any open issues Applicants respectfully request a personal interview with the Examiner to advance prosecution.

No additional fees are believed due herewith. If any additional fees are due, the Commissioner is hereby authorized to charge any fee deemed necessary for the entry of this Amendment to Deposit Account No. 50-0540.

Dated: July 20, 2007

Respectfully submitted,



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